



DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

FTA Docket No. FTA-2014-0009

Response to Comments on Updates to National Transit Database Annual Information Collection

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of Revised NTD Reporting Manual and Response to Comments.

SUMMARY: This notice provides the Federal Transit Administration's response to comments on proposed changes to the National Transit Database (NTD) Reporting Manual, and provides notice that the final Reporting Manual for the 2014 Report Year is now available. The guidance changes in this notice primarily relate to urbanized area transit providers.

DATES: Upon publication of this notice the rules and guidance it describes will become final.

FOR FURTHER INFORMATION CONTACT: Keith R. Gates, National Transit Database Program Manager, FTA Office of Budget and Policy, (202) 366-1794, or email:

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SUPPLEMENTARY INFORMATION:

Title: 49 U.S.C. 5335(a) and (b) National Transit Database. (OMB Number: 2132-0008).

Background: Sections 5335(a) and (b) of title 49, United States Code, require the Secretary of Transportation to maintain a reporting system, using a uniform system of accounts, to collect financial and operating information from the Nation's public transportation systems. Congress established the National Transit Database (NTD) to be the repository of national transit data to support public transportation service planning. The Federal Transit Administration (FTA) administers the NTD to meet these requirements and has collected data for over 30 years. The NTD is comprised of the Annual, Rural, Monthly, and Safety modules. Each module has a Reporting Manual, which FTA updates from time to time to provide new guidance to reporters. This notice provides final updates to the Annual Reporting Manual for the 2014 Report Year.

Approximately 850 urban transit systems currently report to the NTD Annual Module. Each system provides a report on their sources and uses of funds, their capital assets, the amount of service they provide and a Chief Executive Officer (CEO) certification of the data. The reporting requirements for the NTD are within the level that received Paperwork Reduction Act (PRA) approval as part of the entire NTD PRA notice published in the *Federal Register* on November 7, 2011 (76 FR 6881) and approved by the Office of Management and Budget (OMB) on April 29, 2012.

On August 19, 2014, FTA published a *Federal Register* notice for comment on revisions to the NTD Reporting Manual (79 FR 49146). That notice described various changes to the NTD Annual Module that are taking effect with the FY 2014 NTD Report Year. The FTA responds herein to comments on whether, and how, agencies reporting this data might experience difficulties meeting the revised requirements.

The updated guidance in the Annual Reporting Manual will provide better data to the NTD which is used in the grant apportionment formulas and for analysis of industry trends. These changes also implement many of the policy changes enacted in the Moving Ahead for Progress in the 21st Century Act (MAP-21). This notice is independent of the larger rulemaking process that is underway to implement a National Transit Asset Management system and other FTA rulemaking activities.

FTA previously proposed 11 changes to NTD reporting:

- A. Clarification for reporting subset data on Americans with Disabilities Act (ADA) paratransit services
- B. Clarification on the reporting of contractual relationships
- C. Update the definition of the bus rapid transit mode (per FTA C 5300.1 *SGR Grants Program*)
- D. Policy change so that certain High Occupancy Toll (HOT) lanes are no longer *fixed guideway* for purposes of the State of Good Repair Formula
- E. Updates to the definition of commuter service (related to Amtrak services) and allocation of data to urbanized areas

- F. Elimination of consolidated reporting in favor of Small System Waiver reporting.
- G. Clarification on consistent use of transit system names and organization types
- H. Policy clarification allowing delegation of CEO certification responsibility
- I. Elimination of unnecessary reporting requirements (dropping unneeded forms)
- J. Elimination of outdated Circulars related to sampling procedures.
- K. Expansion of capital asset reporting required by MAP-21

FTA received 119 comments from 75 sources. This notice will respond to comments on items A through J. The FTA received a substantial number of comments on item K, the expansion of capital asset reporting. As FTA originally proposed that the expanded asset reporting would not take effect until at least the FY 2015 Report Year, FTA is taking additional time to consider these comments, and will respond to them in a future notice in the *Federal Register*.

RESPONSE TO COMMENTS:

A. Clarification for Reporting Subset Data on ADA Paratransit Services – (27 comments)

FTA proposed the following guidance to improve the consistency and specificity of urban transit systems' ADA data reporting. This proposed guidance would have only applied to full reports from urbanized areas; not to rural reporting, nor to reporting under a small systems waiver.

(1) Transit systems that operate demand response services that are not intended to fulfill the ADA paratransit requirements of any fixed route service should report that zero (0) of their service and operating expenses are attributable to ADA requirements.

(2) Transit systems that operate demand response services to fulfill the ADA paratransit requirements of fixed-route service must report their unlinked trips provided to all eligible paratransit passengers (eligibility determined by local policy), excluding only the following:

(i) Trips that are sponsored by a third party (e.g. Medicare-sponsored trips);

(ii) Trips whose origin or destination (or both) are outside the minimum service (within $\frac{3}{4}$ of a mile of fixed route service) area required by the ADA; and,

(iii) Trips taken during times when the fixed-route system is not operating.

(3) Transit systems that operate demand response services to fulfill the ADA paratransit requirements of a fixed-route service would then report their operating expenses for such services as attributable to the ADA on the same basis. In general, if a transit system does not have an accounting system to track this, then it may report on the basis of the percentage of total demand response trips that were identified as ADA trips, per the above criteria. That is, if ADA trips were 76 percent of all demand-response mode trips, then ADA operating expenses would be reported as 76 percent of total demand-response mode operating expenses.

FTA received 27 comments on the clarification of the ADA Paratransit Services reporting standards. Comments indicated that agencies have integrated ADA requirements into their demand-response systems to such an extent that it is technically difficult for them to separate this service from their normal operations. Their responses noted that it would constitute a considerable burden for them to report this data separately. As FTA does not wish to impose additional reporting burden to collect this data, we withdraw this proposal.

B. Clarification on the Reporting of Contractual Relationships – (9 comments)

FTA proposed to clarify that in order for service to be classified as Purchased Transportation (PT), the service must meet three criteria:

(1) The contract or agreement must provide for the buyer to be responsible for the fully-allocated cost of providing the service;

(2) The service must be operated in the name of the buyer (i.e. the presence of the seller must be generally transparent to the riding public); and,

(3) The seller must operate and manage the service.

Public transportation services that do not meet the above criteria may still be reported to the NTD. However, these services would instead be reported to the NTD as directly operated and would be reported by the organization that is actually operating the service.

FTA received nine (9) comments in response to the clarifications on the reporting of contractual relationships. Three (3) transit providers indicated that they support this clarification or that their business practices are already in compliance with these reporting standards. One (1) additional commenter believes this clarification may be unnecessary because any buyer/seller relationship anomalies would be apparent from the type of NTD forms submitted by the reporter. The remaining five (5) comments are summarized below:

One commenter suggests that the language be changed from the fully allocated cost to the market rate for providing the service; with the market rate being defined as the rate achieved either through a competitive procurement process or a negotiated procurement. Requiring the seller to provide complete accounting records to support the fully allocated rate would be cumbersome and could lead to unintended consequences for transit agencies seeking to provide purchased transportation services at the lowest cost.

The issue presented here is that records must be kept to demonstrate that the amount paid for the purchased service is the actual cost of providing that service. The FTA reserves the right to audit that claim. In general, it can be presumed that if the seller is not receiving funds from any source other than the buyer, then the buyer is paying the fully-allocated cost.

A commenter from an industry association suggested that final guidance should not prohibit the identity of the seller from being displayed on vehicles or uniforms. They also requested clarity on how to identify 'fully allocated costs' of contracted service when some services are provided by the buyer.

A commenter from a transit agency also requested clarification on whether the name of the seller can be included on the vehicle or advertisements.

FTA replies that, although the vehicle used for purchased transportation must prominently display the name of the buyer, this does not preclude the name of the seller, manufacturer or advertisers from also being on the vehicle.

A commenter from a transit agency expressed concern that the proposed change would eliminate the ability to report ridership for its program of ‘last mile’ shuttles from its rail stations.

FTA will address the specifics of this situation directly with the reporter, but nothing in this proposal would prevent any transit service from being reported to the NTD and included in the formula apportionment. Any transit service that cannot be reported as purchased transportation could be reported to the NTD as a directly operated service instead.

One commenter from a transit agency suggested that certain demand response services provided by a third party should be exempt from the requirement to be operated in the name of the buyer. For example, some transit systems use car services with non-dedicated fleets to provide some ADA paratransit services.

FTA agrees and will clarify in the Reporting Manual that demand-response taxi services need not be operated in the name of the buyer.

Comments received in response to this item did not identify any significant issues preventing its implementation and FTA will proceed with publishing these clarifications.

C. Updates to Definition of the Bus Rapid Transit Mode – (5 comments)

On January 28, 2015, FTA published a notice in the *Federal Register* finalizing Circular FTA C 5300.1 *State of Good Repair Grants Programs: Circular and Application Instructions*. In that circular FTA defines the *bus rapid transit* (BRT) mode as a service that meets five criteria. These criteria were re-published with the August 19, 2014 *Federal Register* notice to provide additional notice to impacted parties, in particular with regards to changing the definition of the BRT Mode in the NTD. However, comments on whether the below criteria should be used for funding eligibility in the State of Good Repair Formula Program have been addressed through notice and comment on the circular and FTA has accepted these criteria. The five criteria are as follows:

- (1) Over 50 percent of the route operates in a separated right-of-way (ROW) dedicated for transit use during peak periods (though other traffic may make turning movements through the separated right-of-way);
- (2) the route has defined stations that are accessible for persons with disabilities, offer shelter from the weather, and provide information on schedules and routes;
- (3) the route offers faster passenger travel times through congested intersections by using active signal priority in separated guideway, and either queue-jump lanes or active signal priority in non-separated guideway;
- (4) the route offers *short headway*, bi-directional, service that is provided for at least a 14 hour span on weekdays and a 10 hour span on weekends; (*Short headway* service on weekdays, consists of maximum headways that are either: 15 minutes or less throughout the day; or, 10 minutes or less during peak periods and 20 minutes or less at all other times. *Short headway* service on weekends consists of maximum headways that are 30 minutes or less for at least 10 hours for the day) and,
- (5) a separate and consistent brand identity applied to stations and vehicles.

Bus services that implement features of *bus rapid transit* systems, but which do not meet all of the above criteria, particularly corridor-based *bus rapid transit* projects, would still be reported to the NTD under the fixed-route bus (MB) mode.

FTA received five (5) comments in response to the proposed definition of the bus rapid transit mode.

Two (2) commenters suggested that this change was premature given that Circular C5300.1 is still under development and could have an impact on this definition. Both commenters suggested that these changes should be deferred and reconsidered after the circular has been completed.

The final circular was posted in the *Federal Register* on Wednesday, January 28, 2015. NTD reporters need to use the published definition in order to comply with MAP-21.

One transit system recommended the following changes to the proposed definition:

“1) Over 50 percent of the route operating in a separated ROW dedicated for transit use and HOV/HOT use during peak periods; and, 2) the route offers short headway, bi-directional, service during peak periods.” They believe that the current definition discourages partnerships that provide a combination of BRT and high-occupancy toll or HOV services, including the U.S. 36 BRT in Colorado. The weekend requirement would also disqualify some BRT projects or force unproductive weekend service.

Another transit agency commenter expressed concern that the change in definition will disqualify some existing BRT routes from being formally classified as BRT. They request that the calculation to determine separated ROW exclude segments where a separated ROW is not necessary due to insignificant traffic congestion. They further recommend that the 'treatment of congested intersections' criterion be simplified to be more consistent with the MAP-21 definition that references ‘traffic signal priority for public transportation vehicles’. This change in definition would allow routes that utilize traffic signal priority at some but not all intersections to still be designated BRT.

While FTA has considered alternate interpretations of MAP-21, including these proposed by the commenters, FTA notes that the statute has clear and specific requirements for separated guideway and high-frequency service on weekends. The FTA must follow the statutory requirements in these areas.

D. Guidance for Service on HOT Lanes – (8 comments)

The FTA proposed, beginning with the Fiscal Year 2016 apportionment, to no longer consider transit service operated on any HOT lane to be the same as transit service operated on an HOV lane, for purposes of the formula apportionment for the High-Intensity Motorbus Tier.

Comments on this were solicited in the previously mentioned March 3, 2014, FTA *Federal Register* Notice, C 5300.1 *State of Good Repair Grants Programs: Proposed Circular and Application Instructions*. Thus, while FTA did not seek additional comments on the impact of this policy change on the State of Good Repair Formula Program, FTA did propose to continue

to collect data on the amount of transit service operated on HOT Lanes in the NTD for future use.

The FTA received eight (8) comments in response to the guidance for service in HOT lanes. Five (5) commenters provided feedback that was not specific to FTA's request for comment on continuing to collect HOT lane data for future use. These comments were in response to the March 3, 2014 *Federal Register* Notice on C 5300.1 and, therefore, will not be addressed in this response.

Three (3) commenters provided feedback specific to this request for comment. One (1) commenter suggested that any decisions on continuing to collect HOT lane data should be postponed until after final publication of the C 5300.1 *State of Good Repair Grants Programs: Circular and Application Instructions* (which has now occurred). Two (2) commenters stated that continuing to collect HOT lane data would be unnecessary and burdensome if that data is no longer part of the State of Good Repair formula. Both requested that FTA discontinue collecting this data.

FTA has considered the feedback regarding the burden of collecting HOT lane data and agrees that this reporting burden should be minimized. FTA thus amends its proposal to only collect data on HOT lane directional route miles. Data on HOT lane directional route miles used in transit service will continue to provide important baseline data for policy makers, and these data can be collected with a minimum of reporting burden. However, FTA will discontinue collecting data on vehicle revenue miles driven on those HOT lanes.

E. Updates to the Definition of Commuter Service and Allocation of Data Attributable to an Urbanized Area (UZA) – (5 comments)

The definition of *Public Transportation* at 49 U.S.C. 5302 specifically excludes intercity passenger rail operated by Amtrak, and also intercity bus service. The FTA proposed to amend the definition of public transportation in the NTD Reporting Manual to implement this definition, and to clarify the distinction between commuter and intercity services.

The FTA also proposed to clarify the instructions in the Reporting Manual regarding the allocation of transit service between multiple areas. Transit service classified as *commuter service* that connects one or more urbanized areas or that connects rural areas with one or more urbanized areas must be allocated to the urbanized area that is primarily being served. Each transit agency may determine what proportion of service to allocate to each urbanized area according to a reasonable methodology.

The FTA received five (5) comments in response to the proposed update to the definition of commuter service and allocation of data attributable to an urbanized area. One (1) commenter stated that these updates would not impact their current reporting practices. The remaining four (4) comments all requested that FTA continue its current practice of allowing agencies to determine how service is allocated amongst the UZAs they serve.

The comments on these proposed updates were solely concerned with the allocation of service data amongst the UZAs being served by commuter service. FTA wishes to clarify that the proposed updates will not impact the ability for transit agencies to continue with their current methodology for determining how service data is allocated amongst the UZAs they serve. A transit agency may continue to allocate service data amongst the UZAs they serve according to a reasonable methodology based on the service provided.

F. Proposed Elimination of Consolidated Reporting and Update of Small Systems Waiver Reporting – (25 comments)

The FTA proposes to eliminate consolidated reports and have all urbanized area transit providers report directly to the NTD. Currently there are fewer than 10 consolidated reporters in the NTD. Consolidated reporting makes it difficult to validate and assure the accuracy of NTD data. It complicates NTD data presentation and makes it harder to use the NTD to answer basic questions about the transit industry.

The FTA received 25 comments on the proposal to eliminate consolidated reporting and update the small systems waiver reporting. All commenters were opposed to the elimination of consolidated reporting. Fifteen (15) stated that eliminating consolidated reporting would be administratively burdensome for the small agencies that are currently part of consolidated

reports. Eleven (11) stated that the cost of an individual audit to verify their individual NTD submission would be cost prohibitive. Eight (8) commenters expressed concerns that small agencies that would no longer be eligible for a consolidated reporting would also no longer be required to report passenger miles. This reduction in passenger miles reporting would impact the overall formula funding for the UZA. Eight (8) commenters expressed concerns over the timeline to implement this change and requested extensions between 6 months and 1 year. Finally, eight (8) commenters requested that, should consolidated reporting be eliminated, the threshold for a small systems waiver should be increased from 30 vehicles to 50 vehicles.

The FTA has taken into consideration comments provided by the industry, but does not agree that eliminating consolidated reporting will be more burdensome. Virtually all consolidated reporters are small systems (30 or fewer vehicles) and will qualify for reduced reporting (formerly called small systems waiver reporting). As part of a consolidated report these systems are currently providing data for a full NTD report which requires significantly more effort. For example, reduced reporting does not require sampling for average trip length, an expensive and time-consuming process. In addition, small systems filing reduced reports are only required to do an audit of their accounting capabilities once within their first year of reporting. They are not required to do the annual audits that are required of full reporters. Thus, FTA concludes that concerns about excess reporting burden and auditing requirements are based on an incomplete understanding of the requirements.

In response to the concerns regarding reporting of passenger miles, small systems still have the option of submitting full NTD reports, with passenger miles, if they believe this will have a significant impact on formula funding for their urbanized areas. FTA has evaluated this impact for consolidated reporters, all of which are in urbanized areas with populations of greater than 200,000. Only 5.6 percent of Urbanized Area Formula funds (5307) and 8 percent of Bus and Bus Facilities funds (5339) are apportioned based on passenger miles. Consolidated reporters are all relatively small operators and so generate only a small portion of the passenger miles in their urbanized areas. The FTA finds that the impact of their not reporting those miles on total funding for those areas is quite small.

The FTA recognizes that the proposed timeline may cause a hardship to some reporters and will work with consolidated reporter agencies to transition them to individual reporters over a 2 year period using data waivers and extensions as necessary. FTA also will provide training as the comments we received show that many of these agencies do not understand the reduced reporting requirements and process. Additionally, FTA wants to emphasize that any large transit system that currently sponsors a consolidated report may continue to fill out NTD Report Forms on behalf of reporters filing with reduced reporting requirements. The FTA also will consider adjusting the limit for small systems, currently at 30 or fewer vehicles in maximum operating service, at some point in the future.

G. Clarification on Consistent Use of Transit System Names and Organization Types – (3 comments)

The FTA proposed that the name and organization type on the B-10 form must now match the total revenues and total expenses reported on the F forms.

The FTA received three (3) comments in response to this clarification. One (1) commenter stated that this will not impact their current reporting. One (1) commenter reiterated a concern over administrative burden for small agencies if the consolidated reporting is eliminated. This concern has been addressed in section F of this notice and will not be further addressed here.

The final comment expressed a concern that reporters to the NTD would have to report non-transit costs to the NTD.

The FTA does not intend to collect data on non-transit services. However, it may be necessary to appropriately indicate the size of non-transit costs in order to ensure that the NTD report can be reconciled with a reporter's published financial statements.

H. Policy Clarification Allowing Delegation of Chief Executive Officer (CEO) Certification Responsibility – (6 comments)

The FTA proposed to formally allow the CEO (or equivalent officer) to delegate those duties to another individual within the organization. This delegation would be indicated by submission of

a delegation letter, signed by the CEO on organization letterhead, naming the individual who will act in the CEO's name for this purpose.

The FTA received six (6) responses to this clarification. Three (3) commenters supported or expressed that this clarification would not impact their current reporting. One (1) individual expressed concern that his transit system, which has no direct employees, and is run by a Board of Commissioners, would have difficulty complying with this requirement. The remaining two (2) commenters were seeking additional clarification on this policy. The first requested FTA guidance on the extent to which certification would be considered a 'public record' under FOIA. The second was seeking clarification on the impact this would have on the individual provided with the delegation of the CEO submission. Specifically, is the delegate also responsible for data issues or concerns?

First, this is an option for reporters, not a requirement. It does not require any change in current certification procedures. Our intent is to expedite submission of reports at agencies where it is difficult for the CEO to schedule time to submit the report by allowing delegation of this task. Although the CEO can have subordinates certify the report, the CEO remains, ultimately, responsible for the accuracy of the data submitted. All NTD documents will continue to be public records subject to Federal and State Freedom of Information Act (FOIA) laws.

The comments received on this item did not identify any significant issues with its implementation and FTA will proceed with allowing delegation of CEO certification responsibility as proposed.

I. Elimination of Unnecessary Reporting Requirements – (6 comments)

In its ongoing efforts to streamline NTD reporting requirements and to eliminate unnecessary data collection FTA proposed to eliminate the requirement for rail systems to report vehicle revenue miles, vehicle revenue hours, unlinked passenger trips, and passenger miles traveled for morning peak and evening peak periods. The FTA is no longer using these data and has determined that this data collection is unnecessary. This will align the service data reporting requirements for rail modes with other modes.

The FTA also proposed to eliminate the B-60 and B-70 forms for identifying funds passed from one public entity to another public entity. The clarifications to the reporting of purchased transportation proposed above will render these forms unnecessary, and FTA will no longer require these data.

There were six (6) responses to the proposed elimination of unnecessary reporting requirements. Four (4) commenters expressed support for these changes. Two (2) commenters suggested that FTA should consider eliminating the fleet management plan reporting requirements if the proposed expansion of capital asset reporting (see section G) is implemented. The FTA will proceed with eliminating the proposed reporting requirements and take the recommendation to eliminate the fleet management plan reporting requirement under consideration while making a final determination on the capital asset reporting recommendation (see section K).

J. Updated Guidance for Sampling of Passenger Miles – (6 comments)

The FTA proposed to withdraw several outdated Urban Mass Transportation Administration (UMTA) Circulars that have remained in effect. In particular, FTA proposed to withdraw UMTA C2710.1A, UMTA C2710.2A, and UMTA C2710.4A, which relate to procedures for conducting statistical samples to collect passenger mile data. The FTA proposed to replace these Circulars with the *NTD Sampling Manual*, which has been in use as optional guidance for several years now. Withdrawing these outdated circulars will make the *NTD Sampling Manual* permanent guidance for procedures on sampling for passenger miles.

In addition, FTA proposed to withdraw UMTA C2710.6 and UMTA C2710.7. Both are outdated circulars that have been superseded by the NTD Reporting Manual. The texts of these circulars, as well as the NTD Sampling Manual may be reviewed at www.ntdprogram.gov.

The FTA received Six (6) comments on the updated guidance for the sampling of passenger miles. Three (3) comments expressed support for this change. Two (2) commenters asked FTA to clarify in the final publication of this guidance that alternative methodologies for sampling passenger miles would be acceptable. Specifically, one industry association commented “to the extent sampling methodologies other than described in the *NTD Sampling Manual* provide comparable or better levels of statistical accuracy, FTA should make clear that such are

acceptable.” Two (2) commenters requested postponing the implementation of this guidance until fiscal year 2017 or fiscal year 2018 for reporters that are already collecting data under an alternative methodology in their current fiscal year.

The FTA intends to continue with the implementation of this updated guidance. In response to the concerns raised by commenters wishing to continue using an alternative sampling methodology the updated guidance presented in this *Federal Register* Notice does not preclude agencies from continuing to use alternative sampling methods that meet NTD accuracy requirements. In addition, an agency wishing to transition to a new sampling method provided in this guidance may request a waiver to extend the implementation timeline.

K. Expansion of Capital Asset Reporting – (18 comments)

The FTA received 18 comments on the proposed expansion of Capital Asset Reporting. Many comments raised concerns over implementing this change prior to the publication of a final Transit Asset Management rule. FTA wants to be thoughtful and consider all comments before making this change and will respond to these comments in a future notice in the *Federal Register*. This proposal will not, in any case, be implemented for the FY 2014 NTD reporting cycle.

Therese W. McMillan

Acting Administrator

